(1941/06

Filed on 29/4/06

by Shri Urmil Tupate Advocate

29/4/06

R. to D.R. (J)

(3)

(1)

Single Bench

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

CRIMINAL REVISION NO. 285 /2006

APPLICANT

Sobharam son of Shri Rekharam, aged about 35 years, caste- Marar, resident of village – Meghapara, Mungeli, Police Station Chilphi, Tahsil Lormi Distt Bilaspur (C.G.)

RECEIVED-COPY
29/4/06
CLERK to A. G. BILASPUR

VERSUS

NON-APPLICANT

State of Chhattisgarh, through – District Magistrate – Bilaspur (Chhattisgarh)

CRIMINAL REVISION UNDER SECTION 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE, 1973

(42)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. Rev. 285/ सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	04/05/2006 Shri Abhay Tiwari, counsel for the applicant. Shri Neeraj Mehta, PL for State. Learned counsel for the applicant submits that he does not press M.Cr.P. No. 970/2006 for suspension of sentence and grant of bail which is accordingly dismissed as not pressed. Learned counsel for the applicant submits that he would not press this revision on merits but would argue on the question of sentence and therefore he prays that this matter be heard finally at the stage of admission today. His prayer is not opposed. This criminal revision is admitted for hearing only on the question of sentence. Heard. The applicant Shobha Ram along with Mohar, Manuram, and Rekhram was convicted under Section 325 read with Section 34 IPC vide judgment dated 4.10.2005 delivered by Judicial Magistrate, First Class, Mungeli in criminal case No. 669/1996 and was sentenced to undergo R.I. for 6 months and a fine of s. 500/-. On an appeal preferred by the appellant herein and the other 3 co-accused, the 2nd Additional Sessions Judge (FTC), Mungeli vide judgment dated 26.4.2006 delivered in criminal appeal No. 108/2005 allowed the appeal partly and acquitted co-accused Mohar & Manuram from the charge under Section 325 read with Section 34 of IPC. So far as the sentence awarded to the co-accused Rekhram was concerned, in view of his old age, he was sentenced to imprisonment till rising of the Court and a fine of	

(43)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Rs. 2000/-. The conviction and sentence awarded to the applicant Shobharam as aforesaid, was maintained. Learned counsel for the applicant has drawn my attention to the testimony of Dr. A.V. Chipde P.W. 4. Dr. Chipde had examined Kartikram, the injured on 5.8.1996 and had found swelling and abrasion on acromian process of right scapula and had advised x-ray. In cross-examination, Dr. Chipde opined that the injury could be caused by a fall. Dr. S. Chatterjee P.W. 5 who conducted the radiological examination on Kartikram found facture at acromian process of the right scapular bone and also opined that the said injury could be caused by a fall. Learned counsel for the applicant has referred to the F.I.R. lodged by Kartikram at P.S. Pandariya on the date of occurrence i.e. 5.8.1996 which reveals that the applicant Shobharam was not named specifically as the person who had assaulted Kartikram. Learned counsel for the applicant has prayed that in view of the sentence awarded to co-accused Rewaram and the nature of injury sustained by Kartikram, interests of justice would be served if the applicant is also sentenced to imprisonment already undergone by him and to a fine. It was submitted that the applicant was undergoing sentence since 26.4.2006 and had thus undergone imprisonment for a period of 9 days. The aforesaid prayer of the learned counsel for the applicant is opposed by Shri Neeraj Mehta, learned Panel Lawyer for State, though formally. Having considered the rival submissions, I have perused the impugned judgment and the certified copies of the depositions recorded by the learned trial Judge. Considering the sentence awarded to co-accused Rekhram by the appellate Court, the nature of injury sustained by Kartikram, the fact that Shobharam has already suffered incarceration for a period of 9	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

days and the medical opinion referred to by the learned counsel for the applicant, I am of the considered opinion that the interest of justice would be served if the applicant Shobharam is sentenced to imprisonment already undergone by him and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo S.I. for 3 months.

In the result, this criminal revision is partly allowed. Conviction of the applicant Shobharam under Section 325 read with Section 34 IPC is maintained. However, the sentence awarded by the appellate Court in criminal appeal No. 108/2005 is modified. Applicant Shobharam is sentenced to imprisonment already undergone by him and also to pay a fine of Rs. 2000/- and in default of payment of which he would undergo S.I. for 3 months. The fine of Rs. 500/- awarded by the learned trial Judge, if paid shall be adjusted in the amount of fine awarded by this Court. Out of the amount of fine paid by the applicant Sobharam and co-accused Rekhram, an amount of Rs. 3,500/- shall be paid to Kartikram S/o Sukhnath Sahu, resident of Meghapara, P.S. Pandariya as compensation.

C.C. as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya

[पीछे देखिये